

REMARKS

In the outstanding Official Action, the Examiner:

(1) indicated that the Declaration does not identify, by application serial number, the U.S. patent application which Applicants are claiming the benefit of the earlier priority date pursuant to 37 CFR 1.78;

(2) objected to the drawings as failing to comply with 37 CFR 1.84(p)(4) and required proposed corrections;

(3) objected to the disclosure because the specification does not identify, by application serial number, the U.S. patent application which Applicants are claiming the benefit of the earlier priority date, and required correction;

(4) rejected claims 1-3 and 6 under 35 USC 102(e) as being anticipated by Lopez et al.;

(5) rejected claims 1, 4, 5, 7, 8 and 11 under 35 USC 103(a) as being unpatentable over Cohen et al. in view of Lopez et al.; and

(6) rejected claims 9 and 10 under 35 USC 103(a) as being unpatentable over Lopez et al. in view of Bateman et al.

In response to Item 1 above, submitted herewith is a new DECLARATION AND POWER OF ATTORNEY, which now identifies, by

application serial number, the U.S. patent application which Applicants are claiming the benefit of the earlier priority date. This U.S. patent application is United States Patent Application Serial No. 09/901,310, filed 07/09/01 by Alfred S. Despres III et al. for IMPLANT WITH COMPOSITE COATING (Attorney's Docket HAYES-707 CON), which is in turn a continuation of United States Patent Application Serial No. 09/079,502, filed 05/14/98 by Alfred S. Despres III et al. for IMPLANT WITH COMPOSITE COATING (Attorney's Docket No. 13928-707/HAYES 079502/HAYES-707). Accordingly, Applicants believe that new DECLARATION AND POWER OF ATTORNEY will be acceptable to the Examiner.

In response to Item 2 above, Applicants are now proposing to amend Fig. 2 of the drawings to correctly illustrate reference numeral 87 as designating a first metal which engages hip 15 and reference numeral 90 as designating a second metal which engages polyethylene liner construct 35, which is consistent with Fig. 3 and the specification. In addition, Applicants have now amended Fig. 2 of the drawings to correctly illustrate reference numeral 60 as designating a rail and reference numeral 65 as designating a groove, which is consistent with Fig. 3 and the specification. Submitted herewith are a proposed drawing correction of Fig. 2 (with the changes shown in red) and a set of formal drawings,

including a corrected drawing of Fig. 2. No new matter is being introduced into the application by this amendment. Accordingly, Applicants believe that the drawings should now be acceptable to the Examiner.

In response to Item 3 above, Applicants have now amended the specification on page 1, line 6 to delete "_____" and insert -- 09/901,310 -- in place thereof so as to identify, by application serial number, the pending prior patent application which Applicants claim priority to. Accordingly, Applicants believe that the specification as amended should be acceptable to the Examiner.

In response to Item 4 above, Applicants have now amended independent claim 1 so as to more clearly define the present invention with respect to the prior art. Independent claim 1 of the present invention comprises a prosthetic acetabular component for a prosthetic total hip joint, the component comprising two constructs, one being a metal base construct that engages the bone and the other being a polyethylene bearing construct that attaches to the metal base construct and articulates with a prosthetic femoral stem component on the opposing side of the joint, where the metal base construct is composed of two different metals, a first metal which engages the bone surface

and a second metal which engages the polyethylene bearing construct, with the first metal having a different primary constituent than the second metal, the first metal being selected so as to provide a superior bone-engaging face, and the second metal being selected so as to provide a superior polyethylene-engaging face.

Applicants believe that Lopez et al. disclose an acetabular component having an acetabular shell made of titanium or a titanium alloy (see col. 2, lines 5 and 6) and covered with a porous coating comprised of titanium powder sintered in place (see col. 4, lines 20-21). Applicants believe that Lopez et al. do not teach or suggest the metal base construct of the present invention, where the metal base construct is composed of two different metals, a first metal which engages the bone surface and a second metal which engages the polyethylene bearing construct, with the first metal having a different primary constituent than the second metal, the first metal being selected so as to provide a superior bone-engaging face, and the second metal being selected so as to provide a superior polyethylene-engaging face (underlying added for emphasis). Accordingly, Applicants believe that independent claim 1 is in

condition for allowance, and allowance thereof is respectfully requested.

Claims 2, 3 and 6, which depend directly from independent claim 1, are believed to be allowable for at least the above-identified reasons. Accordingly, allowance of claims 2, 3 and 6 is respectfully requested.

In response to Item 5 above, Applicants have now amended independent claim 1 so as to more clearly define the present invention with respect to the prior art. As noted above, independent claim 1 comprises a prosthetic acetabular component for a prosthetic total hip joint, the component comprising two constructs, one being a metal base construct that engages the bone and the other being a polyethylene bearing construct that attaches to the metal base construct and articulates with a prosthetic femoral stem component on the opposing side of the joint, where the metal base construct is composed of two different metals, a first metal which engages the bone surface and a second metal which engages the polyethylene bearing construct, with the first metal having a different primary constituent than the second metal, the first metal being selected so as to provide a superior bone-engaging face, and the second

metal being selected so as to provide a superior polyethylene-engaging face.

Applicants believe Cohen et al. disclose an acetabular cup assembly with a shell component and a bearing insert, in which the shell component is made from a metal such as titanium or cobalt-chrom alloy, and may have a porous outer coating (see col. 5, lines 34-36). Applicants believe that neither Cohen et al. nor Lopez et al., as discussed above, teach or suggest the metal base construct of the present invention, where the metal base construct is composed of two different metals, a first metal which engages the bone surface and a second metal which engages the polyethylene bearing construct, with the first metal having a different primary constituent than the second metal, the first metal being selected so as to provide a superior bone-engaging face, and the second metal being selected so as to provide a superior polyethylene-engaging face (underlying added for emphasis). Accordingly, Applicants believe that claim 1 is in condition for allowance, and allowance thereof is respectfully requested.

Claims 4, 5, 7, 8 and 11, which depend directly from independent claim 1, are also believed to be in condition for allowance for at least the above-identified reasons.

Accordingly, allowance of claims 4, 5, 7, 8 and 11 is respectfully requested.

In response to Item 6 above, Applicants have now amended independent claim 1 so as to more clearly define the present invention with respect to the prior art. Again, independent claim 1 comprises a prosthetic acetabular component for a prosthetic total hip joint, the component comprising two constructs, one being a metal base construct that engages the bone and the other being a polyethylene bearing construct that attaches to the metal base construct and articulates with a prosthetic femoral stem component on the opposing side of the joint, where the metal base construct is composed of two different metals, a first metal which engages the bone surface and a second metal which engages the polyethylene bearing construct, with the first metal having a different primary constituent than the second metal, the first metal being selected so as to provide a superior bone-engaging face, and the second metal being selected so as to provide a superior polyethylene-engaging face.

Applicants believe that Bateman et al. disclose an acetabular cup having an outer shell and an inner liner, in which the inner liner provides a bearing surface of metallic or ceramic

material (see column 3, lines 7-8), and the outer shell is a material which is suitable for use as bone cement such as an acrylic material (see col. 3, lines 62-67). Applicants believe that neither Lopez et al., as discussed above, nor Bateman et al. teach or suggest the metal base construct of the present invention, where the metal base construct is composed of two different metals, a first metal which engages the bone surface and a second metal which engages the polyethylene bearing construct, with the first metal having a different primary constituent than the second metal, the first metal being selected so as to provide a superior bone-engaging face, and the second metal being selected so as to provide a superior polyethylene-engaging face (underlying added for emphasis). Therefore, claims 9 and 10, include the limitation of which independent claim 1, are believed to be in condition for allowance for at least the above-identified reasons. Accordingly, allowance of claims 9 and 10 is respectfully requested.

In the event that any additional fees may be required to be paid in connection with this submission, please charge the same, or credit any overpayment, to Deposit Account No. 16-0221.

On account of the foregoing, this application is believed to be in condition for allowance. Early and favorable reconsideration is therefore respectfully solicited.

I HEREBY CERTIFY THAT THIS CORRESPONDENCE IS BEING DEPOSITED WITH THE UNITED STATES POSTAL SERVICE AS FIRST CLASS MAIL, POSTAGE PREPAID, IN AN ENVELOPE ADDRESSED TO: ASSISTANT COMMISSIONER FOR PATENTS, WASHINGTON, D.C. 20231, ON:

January 30, 2003

(DATE OF DEPOSIT)

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(NAME OF ATTORNEY)

Mark J. Pandiscio 1/30/03

(SIGNATURE)

January 30, 2003

(DATE OF SIGNATURE)

Respectfully submitted,

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VERSION WITH MARKINGS TO SHOW CHANGES MADE

IN THE SPECIFICATION:

Please amend page 1, lines 5-17 as follows:

This application claims benefit of (1) pending prior U.S. Patent Application Serial No. [_____] 09/901,310, filed 07/09/01 by Alfred S. Despres III et al. for IMPLANT WITH COMPOSITE COATING (Attorney's Docket HAYES-707 CON), which is in turn a continuation of prior U.S. Patent Application Serial No. 09/079,502, filed 05/14/98 by Alfred S. Despres III et al. for IMPLANT WITH COMPOSITE COATING (Attorney's Docket No. 13928-707/HAYES 079502/HAYES-707), and (2) pending prior U.S. Provisional Patent Application Serial No. 60/219,962, filed 07/20/00 by Daniel E. E. Hayes, Jr. et al. for BIMETAL ACETABULAR COMPONENT CONSTRUCT (Attorney's Docket No. HAYES-4 PROV).

IN THE CLAIMS:

Please amend claim 1 as follows:

1. (Amended) A prosthetic acetabular component for a prosthetic total hip joint, said component comprising two constructs, one being a metal base construct that engages the bone and the other being a polyethylene bearing construct that attaches to the metal base construct and articulates with a prosthetic femoral stem component on the opposing side of the joint, where said metal base construct is composed of two different metals, a first metal which engages the bone surface and a second metal which engages the polyethylene bearing construct, with the first metal having a different primary constituent than the second metal, the first metal being selected so as to provide a superior bone-engaging face, and the second metal being selected so as to provide a superior polyethylene-engaging face.

TS/HAYES4.AM2

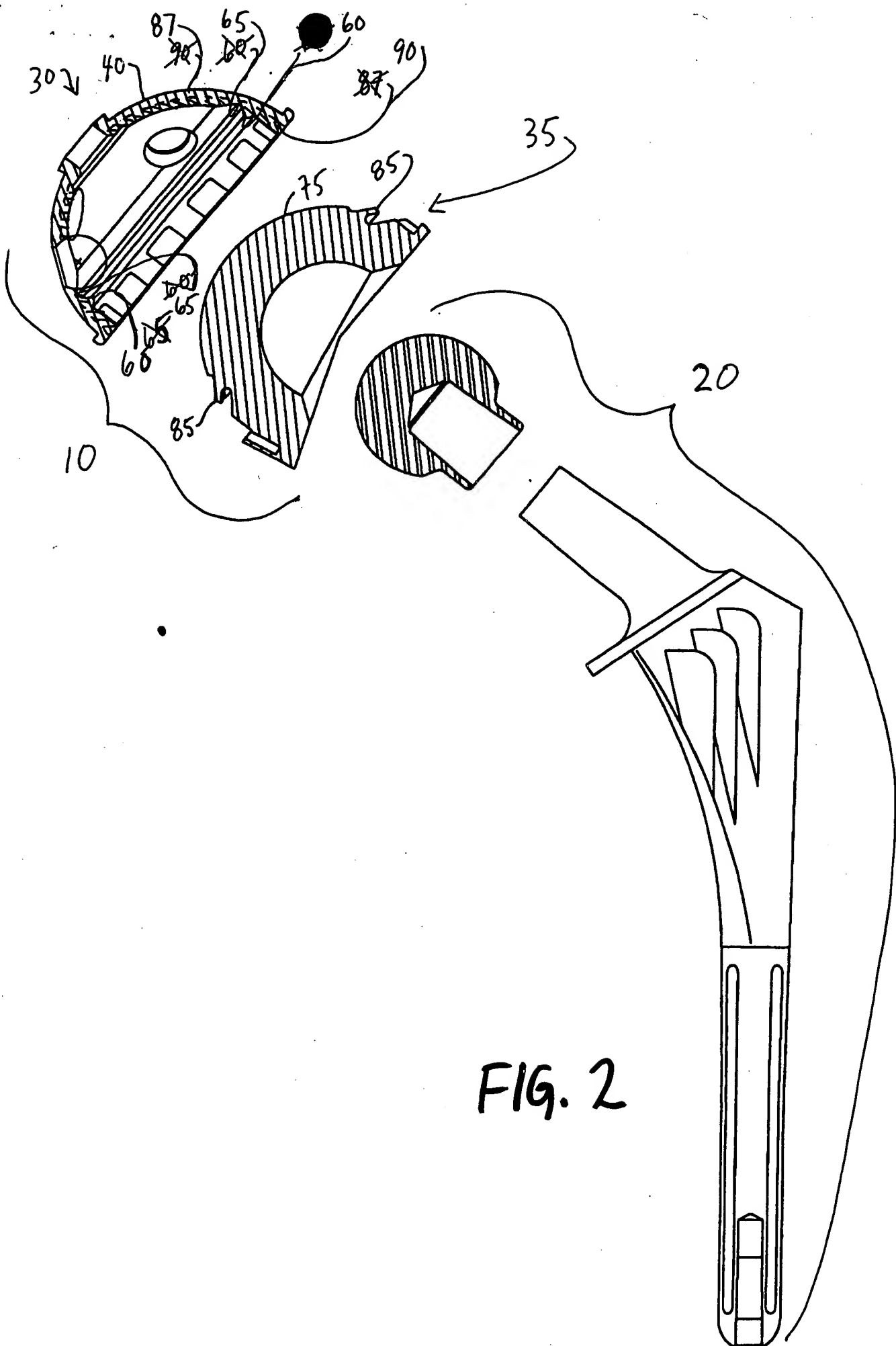


FIG. 2